

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION

GREGORY ROSE

PLAINTIFF

v.

No. 3:19-cv-293-DPM

MIKE GIBSON, Judge, Osceola;
CATHERINE DEAN, Prosecutor,
Osceola; OLLIE COLLINS, Chief,
Osceola Police Department; TERRY,
HODGES, Detective, Osceola Police
Department; and CHRIS ELLIS,
Detective, Osceola Police Department

DEFENDANTS

ORDER

1. Gregory Rose brought this civil rights lawsuit against Defendants in their personal and official capacities. His remaining claim relates to his pretrial detention on criminal charges that were later *nolle prossed*. *Doc. 2; Rose v. Galbson*, 808 F. App'x 403 (8th Cir. 2020). Dean and Gibson each move to dismiss that claim as to them; and Ellis, Collins, and Hodges move to dismiss the official-capacity slice of that claim as to them. *Doc. 21 & Doc. 26*. The Court takes Rose's factual allegations as true and makes all inferences in his favor. *Jones v. Douglas County Sheriff's Department*, 915 F.3d 498, 499 (8th Cir. 2019).

2. Rose says Dean charged him with murder "without any facts or anything to even arrest[] [him.]" *Doc. 2 at 4*. But Dean, a prosecutor, is absolutely immune from suit in her personal capacity for acts taken

as an advocate for the State. *Imbler v. Pachtman*, 424 U.S. 409, 430–31 (1976). And Rose’s official capacity damages claim against her is barred by the Eleventh Amendment. *Morstad v. Department of Corrections & Rehabilitation*, 147 F.3d 741, 743–44 (8th Cir. 1998); *Will v. Michigan Department of State Police*, 491 U.S. 58, 66 (1989).

3. Rose says Judge Gibson charged him with murder “off of hearsay.” *Doc. 2 at 4*. Presiding over preliminary matters in Rose’s case was a core part of Judge Gibson’s work as an Arkansas District Judge. Judge Gibson can’t be sued for those acts. *Mireles v. Waco*, 502 U.S. 9, 11–12 (1991). And again, Rose’s official capacity damages claims are barred. *Morstad*, 147 F.3d at 743–44; *Will*, 491 U.S. at 66.

4. Collins, Hodges, and Ellis ask only that Rose’s official capacity claims against them be dismissed. *Doc. 27*. Rose says he stated an individual capacity claim against each of them, *Doc. 44*, but those individual capacity claims are not at issue. Because Rose didn’t allege that a City of Osceola policy or custom caused his injury, he’s failed to state official capacity claims against Collins, Hodges, and Ellis. *Corwin v. City of Independence, Missouri*, 829 F.3d 695, 699 (8th Cir. 2016).

* * *

Defendants’ motions to dismiss, *Doc. 21 & Doc. 26*, granted. Rose’s claims against Dean and Judge Gibson are dismissed without prejudice; they are dismissed from this lawsuit. Rose’s official capacity

claims against Collins, Hodges, and Ellis are dismissed without prejudice. The individual capacity claims against them go forward.

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

13 January 2021